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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

July 21, 2016

X =

Y =

A =

B =

C =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This letter responds to a letter dated December 17, 2015, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 1. On Date 2, X converted from a State corporation to a State limited partnership and X filed a new election to be treated as an S corporation. Y was formed as a State limited liability company to act as the general partner in the limited partnership and was wholly owned by individuals A and B. Y became a shareholder of X on Date 2. However, Y was an ineligible S corporation shareholder and therefore X's S election terminated on Date 2. Effective Date 3, C, an eligible shareholder of X, acquired Y's shares of X stock.

The conversion on Date 2 may have created a second class of stock in violation of the one class of stock requirement under § 1361(b)(1)(D), thereby possibly creating a second basis for X's S election to terminate. Therefore, X converted from a State limited partnership to a State limited liability company on Date 4.

X represents that the termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in §1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(1)(D) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that does not have more than one class of stock.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which a corporation is an S corporation) such corporation ceases to be a small business

corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2 when shares of X were transferred to Y, an ineligible shareholder. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Moreover, we conclude that if X's conversion from a State corporation to a State limited partnership did create a second class of stock, the consequent termination of X's S corporation election was inadvertent within the meaning of 1362(f).

Accordingly, under § 1362(f), X will be treated as an S corporation from Date 2 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). This ruling is conditioned upon X filing a Form 8832 within 120 days from the date of this letter with the appropriate service center, with a copy of this letter attached. A copy is enclosed for that purpose.

Except for the specific ruling above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X was otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes